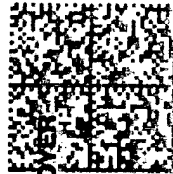


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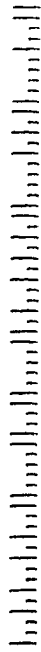
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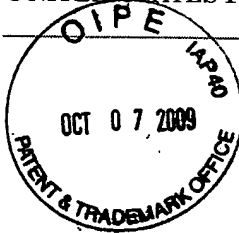
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Paper No. 12

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SEP 25 2009

In re Patent No. 6,221,836
Issued: April 24, 2001
Application No.: 09/213,968
Filing Date: December 17, 1998
Attorney Docket No. 1207-003D

OFFICE OF PETITIONS
: REQUEST FOR INFORMATION
:
:
:

This is a request for information in response to the petition under 37 CFR 1.378(b), filed August 28, 2009, to reinstate the above-cited patent.

Petitioner is allowed a non-extendable period for reply of **TWO (2) MONTHS** from the mailing date of this communication to provide a response. The response should be titled, "Response to Request for Information." If no response is provided within the period set forth, a decision will be made solely on the merits as set forth in the petition under 37 CFR 1.378(b) filed August 28, 2009. No additional fees are due.

The patent issued April 24, 2001. The 3.5 year maintenance fee could have been paid from April 24, 2004, through October 24, 2004, or with a surcharge, as authorized by 37 CFR 1.20(h), during the period from October 25, 2004 to April 24, 2005. Petitioner did not do so. Accordingly, the patent expired at midnight on April 24, 2005.

Petitioner is required to address the following points:

- The petition filed August 28, 2009, does not affirmatively indicate the cause of the delay in paying the 3.5-year maintenance fee. It is noted that petitioner states that Mr. Don Nickey, the attorney charged with paying the 3.5-year maintenance fee, was infirmed and has passed away. Petitioner intimates that Mr. Nickey's illness may have resulted in the non-payment of the maintenance fee. Arguably, this is supposition and conjecture on the part of petitioner's representative and it does not appear that petitioner has been able to determine the actual cause of the error that resulted in the non-payment of the 3.5-year and 7.5-year maintenance fees. Neither has petitioner provide a statement from anyone with firsthand knowledge of these allegations. A successful petition under 37 CFR 1.378(b) must affirmatively identify the error that resulted in the non-payment of the maintenance fee.
- Petitioner has not shown that Mr. Nickey, or his associates, has any steps in place for ensuring that the maintenance fees would be timely paid. Petitioner must address this issue.
- As per *Link v. Wasbash*, 370 U.S. 626, the USPTO must rely on the actions or inactions of the duly authorized and voluntarily chosen representatives of the application, and the applicant is bound by the consequences of those actions or inactions. Specifically, petitioner's delay caused by the mistakes or negligence of his voluntarily chosen representative does not constitute

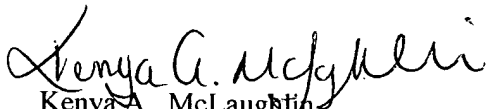
unavoidable delay. Presuming that it was an act or omission of Mr. Nickey that contributed to the delay in paying the maintenance fees, the act or omission of Mr. Nickey are imputed wholly to petitioner in the absence of evidence that the attorney has acted to deceive the petitioner.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patent
Mail Stop Petitions
Box.1450
Alexandria, VA 22313-1460

By facsimile: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.


Kenya A. McLaughlin
Petition Attorney
Office of Petitions

cc:
Donn K. Harms
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Del Mar, CA 92014